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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

vs.

DAVID NEELEY,

Defendant

Case No.
B-9705067

O R I G I N A L

DEPOSITION OF:

JOHN E. GERBER, MD

TAKEN:

By the Plaintiff

DATE:

November 24, 1999

TIME:

Commencing at 1:30 p.m.

PLACE:

Offices of:
Prosecuting Attorney
Hamilton County
Suite 4000
230 East Ninth Street
Cincinnati, Ohio 45202

BEFORE:

BARBARA A. THACKER, RPR
Notary Public - State of Ohio

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 SETH S. TIEGER, ESQ. and
4 BRADLEY J. GREENBERG, ESQ.

5 of

6 Prosecuting Attorney

7 Hamilton County

8 Suite 4000

9 230 East Ninth Street

10 Cincinnati, Ohio 45202

11 On behalf of the Defendant:

12 PERRY L. ANCONA, ESQ.

13 of

14 Perry L. Ancona Co., LPA

15 1300 American Building

16 30 East Central Parkway

17 Cincinnati, Ohio 45202

18 S T I P U L A T I O N S

19 It is stipulated by and between counsel for the
20 respective parties that the deposition of JOHN E. GERBER,
21 MD, a witness herein, may be taken at this time by Counsel
22 for the Plaintiff as upon cross-examination and pursuant to
23 the Ohio Rules of Civil Procedure; that the deposition may
24 be taken in sténotype by the notary public-court reporter
and transcribed by her out of the presence of the witness;
that the transcribed deposition is not to be submitted to
the witness for his examination and that signature is
waived.

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1 JOHN E. GERBER, MD
2 of lawful age, a witness herein, being first duly affirmed
3 as hereinafter certified, was examined and deposed as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. TIEGER:

7 Q. Ladies and gentlemen, we're here with Dr. Gerber,
8 it's Wednesday, November 24, around 1:30 in the afternoon.
9 Present are defense counsel, as well as Mr. Greenberg, and
10 we're here to take the deposition of Dr. Gerber who was the
11 coroner on the Judy Smith case. He is unavailable to
12 testify, is that correct, Doctor, during the time this
13 trial is going to be held?

14 A. Yes.

15 Q. Would you please state your name and spell your
16 last name?

17 A. John, J-O-H-N, E. Gerber, G-E-R-B-E-R,
18 medical doctor.

19 Q. And what's your occupation, Dr. Gerber?

20 A. I am a forensic medical examiner in Nashville,
21 Tennessee at the Metropolitan County of Davidson in
22 Nashville and I work for a private firm called Forensic
23 Medical, which contracts to the Metropolitan County for
24 forensic services.

1 Q. Is that in Nashville, Tennessee?

2 A. It is.

3 Q. And because your duties in Nashville, Tennessee
4 the last week of November, the week of the 29th, and the
5 first week of December, I think it's December 6, that
6 Monday, you would be unavailable to come to court for those
7 two weeks; is that correct?

8 A. That's correct.

9 Q. And you have been nice enough to fly up to
10 Cincinnati to be deposed today, the Wednesday before
11 Thanksgiving?

12 A. Yes.

13 Q. What was your occupation in May of 19 -- May and
14 June of 1994?

15 A. I was one of the Assistant Medical Examiners at
16 the Hamilton County Coroner's Office in Cincinnati, Ohio.

17 Q. Dr. Gerber, could you go through for the ladies
18 and gentlemen of the jury your educational background?

19 A. Briefly, beginning with graduation from medical
20 school, which occurred in June of 1974, I graduated from
21 Tufts University in Boston. After that I did internship
22 and a complete four year residency program in all aspects
23 of pathology at the University of Vermont and finished that
24 in 1979. After that I became board qualified in both

1 anatomic and clinical pathology. For a number of years I
2 practiced hospital pathology.

3 In 1992 I did a fellowship in forensic pathology
4 at the University of Pennsylvania in Philadelphia at the
5 Medical Examiner's office and subsequently became board
6 certified in forensic pathology after that training period.

7 I came here in 1993 to Cincinnati, Ohio, and
8 practiced for four years as a medical examiner until I
9 moved to Nashville, Tennessee in 1997.

10 Q. I forgot to say that Mrs. Thacker was here from
11 Judge Niehaus' room taking a transcript of all your
12 testimony, Dr. Gerber, but she's present in the room as
13 well.

14 A. Yes.

15 Q. Back in May and June of 1994, were you licensed to
16 practice medicine in the State of Ohio?

17 A. I was.

18 Q. And you're now licensed in the State of Tennessee?

19 A. That's correct.

20 Q. Could you describe, Dr. Gerber, to the ladies and
21 gentlemen of the jury what is a pathologist?

22 A. Since we are dealing with autopsy pathology I'll
23 confine my comments to strictly that area of pathology.
24 It's an examination of a person who is deceased from head

1 to toe. And as I'm demonstrating on myself, would be to
2 the top and look all the way down to the toes and the feet,
3 including clothing, if that's appropriate, and look at the
4 outside of the body first, after which we take the clothes
5 off, do a "Y" shaped incision, like I'm making on myself,
6 or demonstrating on myself, reflect back the chest plate
7 and the soft tissue and then look at the internal organs.

8 Then the head is examined simply by cutting across
9 to both sides of the ear and reflecting the scalp forward
10 and backward and then taking the top of the skull off with
11 a saw and removing that, and then looking at the brain and
12 taking that out.

13 Q. And you've talked about what a pathologist does.
14 Did part of your answer encompass what an autopsy actually
15 is?

16 A. Yes, I was really describing autopsy and the kind
17 of work we do is, looks at sudden unexpected death, whether
18 it's a homicide, killed by somebody else; suicide, killed
19 by the person themselves; an accident, whether that's
20 industrial or motor vehicle accident, or a natural death
21 such as a heart disease.

22 Q. So when you're examining a body you're looking at
23 the different manners that death could have occurred,
24 either accident, suicide, natural or homicide?

1 A. That's correct.

2 Q. And I'm going to -- have you performed -- I don't
3 know if you have got an estimate, Doctor, of how many
4 autopsies you've performed but do you have an idea of how
5 many you've done?

6 A. Yes, over 2,000.

7 Q. I'm going to direct your attention now to June 1
8 of 1994, in the early afternoon hours of that day,
9 somewhere around 1:30 or so in the afternoon and ask you if
10 you responded to an area in lower Millcrest Park?

11 A. Yes, I did.

12 Q. And did you occasionally respond to murder scenes
13 when you were a coroner?

14 A. Yes. We did not go to every one but there were
15 some occasions when we went with the medical investigator.

16 Q. And did you go to this particular scene?

17 A. I did.

18 Q. Were you directed to a certain area by law
19 enforcement?

20 A. Yes. There was a wooded area, a bushy area
21 covered with trees and bushes and with lots of leaves
22 underneath these trees.

23 Q. Okay. And could you describe to the ladies and
24 gentlemen of the jury, Doctor, what you observed at the

1 destination where you were directed?

2 A. Many leaves were covering what looked like a
3 partially decomposed body. Most of the body was covered
4 except for parts of the head, and the areas that were not
5 covered were very dried parchment-like skin, like parchment
6 on a book.

7 In addition to that there were many maggots
8 involving consuming tissue parts of this particular
9 deceased person.

10 Q. Okay. You've used a couple words, Doctor, and we
11 could either talk about those now or we are going to go
12 through it a little bit later, but you used the word
13 decomposition. What does that word mean, if you could
14 explain that.

15 A. It's anything that is killed, whether it's human
16 beings or deer on the road or birds, soon undergo a process
17 whereby tissue breaks down, blood breaks down. Insects,
18 for example flies, lay eggs almost before death in humans
19 or shortly thereafter, and 24 hours later those are hatched
20 into what become maggots, and I describe maggots which are
21 white small insect creatures which consume tissue, whether
22 it's a human being or a dead bird or a dead deer on the
23 road, whatever that may be. And then there are different
24 kinds of decomposition stages, that is depending on the

1 length of the time of the person and also heat and other
2 factors.

3 Q. Okay. And when you examined the body at that time
4 you saw evidence of decomposition?

5 A. Yes.

6 Q. And maggots were on or in the body?

7 A. They were abundant either on or in the body, yes.

8 Q. Now, the body was moved to the coroner's lab; is
9 that correct?

10 A. Yes, it was.

11 Q. And I assume law enforcement officers were at the
12 scene then at lower Millcrest Park when you were there?

13 A. They were there and the area was cordoned off.

14 Q. So they would have been there prior to you getting
15 there and called you in?

16 A. That's right, they were.

17 Q. Now, was an autopsy done the next day, I believe
18 on June 2, of 1994?

19 A. Yes, it was.

20 Q. Where was that done?

21 A. At the Hamilton County Coroner's office here in
22 Cincinnati.

23 Q. And was that done by you?

24 A. Yes, it was.

1 Q. And identification was made at a later time that
2 this was the body of Judy Smith; is that correct?

3 MR. ANCONA: Objection.

4 MR. TIEGER: You can answer that.

5 A. Yes, it was.

6 Q. If you could, Doctor, could you describe what if
7 any clothing the person who was later identified as Judy
8 Smith had on?

9 A. Briefly, she had a polyester white exercise suit
10 with blood stain on its outside and inside.

11 Q. Now Doctor, if I could, you are referring to a set
12 of documents that looks like several pages; is that a death
13 record and postmortem examination, your typewritten report
14 of what you did at this time?

15 A. Yes, it is.

16 Q. I believe that's been turned over to Mr. Ancona as
17 part of the discovery in this case, and if you'd like to
18 refer to it to refresh your recollection during this
19 testimony, you may do so.

20 A. Thank you.

21 Q. And as far as the clothing, you were talking about
22 the clothing?

23 A. Yes. There was a white jump suit or exercise
24 suit, there was a pink-red bikini top, and there was a

1 pink-red bikini bottom.

2 Q. Okay.

3 A. Three pieces of clothing.

4 Q. And at a certain point, Doctor, did you determine
5 later on during your examination of the body that there
6 were stab wounds present in the body?

7 A. Yes.

8 Q. And did the -- some of the -- were there tears on
9 any of this clothing?

10 A. There were many, and many -- there were multiple
11 tears and each tear corresponded to the wounds on the body.

12 Q. So the clothing tears corresponded to the stab
13 wounds?

14 A. Yes.

15 Q. Would that indicate to you that the stab wounds
16 were through the clothing and into the body?

17 A. Yes. ,

18 Q. As far as what you did next, did you determine the
19 height and weight of Judy Smith?

20 A. Yes. .

21 Q. Okay. And could you describe that for me? 5.6

22 A. She weighed 130 pounds and measured 66 inches
23 which is five foot six inches.

24 Q. And as you did your examination what affect did

1 the decomposition have on your ability to do this
2 examination?

3 A. Well, as I described in the autopsy report, the
4 eyes were absent, secondary to decomposition, and the left
5 eye socket was filled with the maggots as I had described
6 earlier, and the right side was partially filled.

7 Q. What about the teeth, Dr. Gerber?

8 A. The teeth were present.

9 Q. And was there anything unusual about Judy Smith's
10 teeth?

11 A. There's a word I used called diastema,
12 D-I-A-S-T-E-M-A, and it refers to the open space between
13 the two upper teeth or two lower teeth, whichever it may
14 be. In her case it was the upper central incisors, as I'm
15 pointing on my own face, that were spread apart wider than
16 usually are identified in humans, and they were rotated
17 laterally, that is this way, away from the center of the
18 face.

19 Q. What about her hair?

20 A. She had 12-inch long blond hair.

21 Q. Did your external examination continue to look at
22 her fingernails at all?

23 A. Yes.

24 Q. And could you describe those fingernails for the

1 jury?

2 A. All her digits were present, so all fingers were
3 present and there was red fingernail polish on all the
4 fingernails and the fingernails were not damaged in any
5 way.

6 Q. Okay. And was there any evidence at all that
7 there was any skin of an attacker or any reason to believe
8 that she scratched her attacker?

9 MR. ANCONA: Objection, leading question.

10 Q. I could rephrase that. Do you have any opinions,
11 based on your education, background and training, as far as
12 whether the status of her fingernails and whether or not
13 those were used to scratch anybody, based on your
14 examination?

15 A. We did clip the fingernails, as is the case in
16 these kinds of autopsies, and to my knowledge no tissue was
17 found underneath these fingernails.

18 Q. You didn't see any evidence of skin under the
19 fingernails?

20 A. I did not see any, no.

21 Q. Okay. Now, moving onto your further external and
22 internal examination of Judy Smith's body, Dr. Gerber. I
23 think you marked your postmortem examination by different
24 areas and I think you called those areas A, B, C and so

1 forth. Would that be the easiest way to go through the
2 injuries that you noted to Judy Smith?

3 A. Yes. In summary, for the beginning I described
4 things anatomically, for example, as the right breast being
5 right A, as in apple. The left breast area was B, as in
6 boy. And then each wound in those areas, which was more
7 than just the breast but the chest and that area, was
8 described because there were so many injuries.

9 Q. Starting with Area A that you've called it the
10 right breast, could you describe to the jury what you found
11 in that area of the body?

12 A. In the right -- pardon me. In the right breast
13 there were six stab wounds and I numbered them 1 through 6.
14 As I indicated earlier, the anatomic location was indicated
15 by letter A, and then within that area I used numbers 1
16 through 6.

17 Q. Okay. Just starting out however you feel
18 comfortable, Dr. Gerber, if you could just describe to the
19 jury those six wounds, where they were, what path they took
20 and so forth.

21 A. Since there were so many we grouped them, or I
22 grouped them, and rather than describing each one, unless
23 indicated or questioned otherwise, I will summarize that
24 the six wounds in this particular area of A, right breast,

1 as I'm pointing on myself, involved the wound to the middle
2 lobe of the right lung, this side, with three penetrations,
3 and the right lower lobe, as I'm pointing on myself. So
4 these were six penetrations of the middle and lower lobes
5 of the right lung, middle and lower lobes, and the greatest
6 depth of the injury was to five inches in depth, about this
7 long, as I'm showing with my right hand. The direction
8 was, as best could be determined, was from front to back.

9 Q. And as far as the seriousness of those wounds,
10 Dr. Gerber, how serious were those stab wounds?

11 A. The lung is a very vascular organ and it has many
12 large blood vessels. Some people can easily die very
13 quickly, that is anybody can die very quickly from serious
14 injuries just to the lung itself. So these were fatal-type
15 injuries unless immediate medical attention would have been
16 rendered.

17 Q. Moving on then, Doctor, would that be appropriate?

18 A. That's fine.

19 Q. To Area B, the left breast area. Could you
20 describe the wounds to that area?

21 A. As I indicated and I pointed on myself and I am
22 doing so now, the left breast area encompassing in this
23 case more than just the left breast itself, there were
24 wounds, as I numbered them 7 through 11, and they involved

1 the sac around the heart called the pericardial sac or
2 pericardial bag that holds the heart in place and protects
3 it, as well as the heart itself. There were a total of 12
4 penetrations into the pericardium, the sac-like structure
5 around the heart, as well as into the heart itself, in this
6 particular group of injuries labeled Group B, left breast
7 and number 7 through 11. The maximum depth of penetration
8 of this particular set of injuries was four-and-a-half
9 inches, a little less than I just mentioned above where it
10 was five inches.

11 Q. Doctor, you've indicated to the jury that there
12 were 12 penetrations but only five stab wounds. Could you
13 explain how five stabbings can make 12 penetrations?

14 A. If you look, as I am demonstrating, and have to
15 imagine in your mind that the sac is around the heart, a
16 wound could go through one side and then out the other, or
17 it could also go obliquely across the sac-like covering I'm
18 describing and there could be two wounds that way, so they
19 could add up to more than one would normally expect.

20 Q. And as far as the wound path on those wounds, what
21 would the wound path have been?

22 A. These were frontward to backward.

23 Q. And were any of these serious or fatal-type
24 injuries?

1 A. They were. They were very serious. One was to
2 the right atrium, as you all know in the jury, there are
3 four chambers of the heart. There are two on the right and
4 two on the left. Right atrium, left atrium. Right
5 ventricle and left ventricle. And in this case one was to
6 the right atrium, two were to the right ventricle and two
7 were to the left ventricle.

8 Q. And these are serious, fatal wounds?

9 A. They are very serious, fatal wounds.

10 Q. Along with at least one of the wounds to the right
11 breast area that you talked about before?

12 A. Yes. I should qualify this in saying that the
13 pericardial sac can be injured without too much difficulty.
14 It's the heart itself, of course, which is the most serious
15 problem in this particular instance.

16 Q. Moving to Area C, the left mid abdomen.

17 A. In this area, left mid abdomen, as I'm pointing on
18 myself, as I'm partially standing here, there were wounds
19 12 through 16. And in summary, these involved the left
20 diaphragm, as you know the left hemidiaphragm is the part
21 that supports the lungs and helps one breathe. But more
22 importantly, one was to the left lobe of the liver which
23 would be a little bit just to the left of midline, as I'm
24 pointing on myself, and the diaphragm and the liver were

1 involved in these particular sets of wounds.

2 Q. And were any of these stab wounds serious?

3 A. Well, it depends a little bit, in this case one
4 can receive a fair amount of injury to the liver, it
5 depending on where the exact liver injury is. But liver
6 hemorrhage is very potentially serious but can be
7 surgically resolved if immediate care is obtained.

8 Q. So out of the 12 -- number 12 through 16, the stab
9 wound to the liver, out of that grouping, would have been
10 the most serious of those stab wounds; is that correct?

11 A. Of this group, yes.

12 Q. And what was the direction of that wound path?

13 A. This was again front to back.

14 Q. Meaning the knife came in the front, toward the
15 back --

16 MR. ANCONA: Objection.

17 A. Whatever object --

18 Q. What would you mean by front to back?

19 A. I am just -- I would say front to the back part of
20 me. Whatever sharp object was used to cause this.

21 Q. Moving next to Area D. What area would that be?

22 A. This was labeled the left lateral abdominal wall.

23 If I may just stand I could just point to myself. Like

24 here. There were two stab wounds and these really were not

1 as significant as the ones we just described above, or
2 discussed above.

3 Q. Okay. Moving to Area E, the back of the torso.

4 A. In this group there was one major injury which
5 involved the liver again, and the diaphragm, which I just
6 described. In this particular instance the right lobe of
7 the liver, as I'm pointing on myself here, from the back,
8 was involved. And that maximum depth of that wound was six
9 inches.

10 Q. Would that have been the deepest penetration that
11 you noted, Dr. Gerber, is the six inch penetration?

12 A. Yes. We have had four-and-a-half inches up to six
13 inches so far.

14 Q. And six inches is the deepest one you've described
15 for the jury?

16 A. Yes.

17 Q. What would the wound track be on stab wounds 19
18 through 21?

19 A. In terms of the direction?

20 Q. Yes.

21 A. Number 19 was backward to frontward because that
22 was from the back. And then there was, Number 21 was again
23 part of the back of the torso. The next, 22 was in the
24 buttocks, that is the right upper buttocks as I'm pointing

1 on myself, over this way.

2 Q. Let me go back a little bit. As far as the back
3 of the torso, when you say "back of the torso" what, if you
4 could show the jury what area you are describing there?

5 A. I'm considering the torso in this area here. The
6 buttocks, of course, are here, and the torso would be from
7 here up to the shoulder area.

8 Q. So wounds 19, 20 and 21 were to the back of the
9 body of Judy Smith?

10 A. Yes.

11 Q. And how serious -- I know you said some stab
12 wounds were more serious than others. How serious were
13 these stab wounds to the back of her torso?

14 A. Most of these were soft tissue injuries and
15 skeletal muscle injuries. As I indicated the one in Area
16 E, the back of the torso involved the liver, that was the
17 most serious of the back injuries, the other ones involved
18 mostly soft tissue and, of course, you can ooze and loose a
19 lot of blood with that, but not with a significance. You
20 can with a major organ like the liver, lungs or heart like
21 we described, or I discussed above.

22 Q. And two of the penetrations on the back of the
23 torso wounds went through the liver?

24 A. Yes.

1 Q. Serious injuries, Dr. Gerber?

2 A. I just need to qualify my statements a little bit.
3 We are dealing with a very decomposed body. We are dealing
4 with dry tissue and the maximum observation that could
5 normally be made with a case like this is not possible
6 because of the decomposition.

7 Q. Okay.

8 A. So these were best estimates and best observations
9 at this point in time.

10 Q. There has been evidence, Dr. Gerber, in this case
11 already that Judy Smith was last seen early in the morning,
12 or sometime midmorning, around noon time or so on the, I
13 believe Saturday, the 28th of May. You observed the body,
14 I believe on June 1, at the scene?

15 A. Yes.

16 Q. Would the amount of the decomposition be
17 consistent with the body being left there for that amount
18 of days?

19 MR. ANCONA: Objection.

20 MR. TIEGER: You can answer that.

21 A. It's very difficult to put a precise time on a
22 person's time of death with decomposition. Good estimates
23 can be made, and as I indicated earlier, fly eggs are laid
24 in the eyes, for example, right, or soon before death or

1 right after death. Twenty-four hours later the eggs are
2 hatched into maggots. But then other circumstances are
3 very important. The temperature of the day, the place,
4 outside, cold, heat, inside, exposure, but the particular
5 case under discussion, it is consistent with that kind of
6 time frame.)

7 Q. Thank you, Doctor.

8 Moving to Area F, the buttocks. Did you find any
9 stab wounds there?

10 A. Yes.

11 Q. Could you describe those for the jury?

12 A. There was, Number 22 was the right upper buttocks.
13 Number 23, left lower; 24, left lower; and there were three
14 to the buttocks.

15 Q. Okay. Moving to Area G, the neck. Could you
16 describe what you found in that area?

17 A. In the left posterior neck there was a gaping
18 wound, but part of the problem with observing on the left
19 side of the neck was there was marked decomposition so that
20 the exact details could not be identified because the
21 skeletal spinal column was identified. There was at least
22 one and that's all I could identify.

23 Q. Is there a term that you've heard of called
24 skeletonization or a body -- or a certain part of the body

1 being skeletonized?

2 A. Yes. That's when most or almost all of the soft
3 tissue has disappeared and all that remains is bone.

4 Q. And did you find any evidence of skeletonization
5 in the body of Judy Smith?

6 A. The left side of the neck was the most prominent.
7 And then again I mentioned that her eyes were absent. But
8 she did have skin covering throughout the rest of her body.

9 Q. You also said, I believe, somewhere in your
10 autopsy that the feet were marbleized. What does
11 marbleization or marbleized mean?

12 A. Marbleization is another form of another stage of
13 decomposition. It's an earlier stage where the blood
14 vessels become accentuated because the blood products break
15 down and leach out into the surrounding tissue. So as I'm
16 pointing to my vein on my hand here, if a person dies the
17 accentuation of that pattern will be that much greater than
18 normally identified because the blood breaks down and leaks
19 out into the surrounding tissue. And it gives a pattern of
20 marble of a floor, a very meted pattern that you would see
21 on a floor, kitchen floor, for example, that has a
22 marbleized pattern.

23 Q. Doctor, moving on now to the upper and lower
24 extremities, if we could. Would that be the next area

1 that's logical to follow now?

2 A. Yes.

3 Q. Before I do that, how many total wounds then would
4 there have been to the -- that we've already discussed, to
5 the body of Judy Smith?

6 A. So far we've discussed 25 wounds.

7 Q. Now moving to the upper and lower extremities, how
8 many stab wounds and incised wounds did you find in the
9 extremities?

10 A. There were 15.

11 Q. Would that be 15 separate from the 25?

12 A. There were 15 separate ones that I could identify.

13 Q. And again, did you --

14 A. I'm sorry. Yes, separate from the 25.

15 Q. If you could just go through those for the jury.
16 What areas of the body are we talking about when we are
17 talking about the extremities?

18 A. Again, for purposes of clarity and illustration in
19 this particular case, the left arm being from the shoulder
20 to the elbow, forearm and hand, were designated as Area A;
21 and then -- and there were nine wounds on that side. Right
22 hand was designated Area B, and there were three wounds on
23 that. And then the next area was Area C, that's the left
24 leg, and there were three wounds in that area.

1 Q. And if you could just very briefly, Doctor, go
2 through each of those wounds and tell the jury where on the
3 body they were and what type of stab wounds they were.

4 A. In the first instance, beginning with Area A, the
5 left arm, that is the left lateral arm, there was an
6 incised wound, and by that I mean it was longer than it was
7 deep, and to further explain the words that I've been
8 using, a stab wound is longer than it is wide. So
9 therefore, just for example, using the sharp edge of this
10 pen and going this way two inches, would be a stab wound.

11 If this were a sharp blade and I went this way, it
12 was one-half inch deep and four inches long, that would be
13 an incised wound. So there is a difference between incised
14 wounds and a stab wound.

15 In this particular case it was an incised wound.

16 Q. Are all of these wounds that you've described,
17 Dr. Gerber, consistent with coming from a knife?

18 A. I can't say knife for sure. What I can say is it
19 was a sharp blade of some sort.

20 Q. Okay.

21 A. Whether it was a box cutter, knife, or something
22 used in the kitchen, something used in the shop, it had to
23 have a sharp edge to it.

24 Q. So you started with Number 1. If we could move to

1 Number 2 then.

2 A. Number 2 was a very superficial wound and it just
3 was that, not involving much more than soft tissue.

4 Number 3 was on the shoulder -- we are still
5 dealing with Area A and the left side was a superficial and
6 penetrating stab wound. Number 4 was a penetrating and
7 superficial stab wound; and Number 5, on the posterior
8 forearm, that is -- we arbitrarily use the body, as I am
9 standing here, anterior and posterior, for purposes of
10 anatomic description and diagnosis and examination. So
11 this is anterior, and this is posterior. So that's the way
12 I am describing in this particular setting.

13 Q. Okay. Moving onto the hand, then, the left hand?

14 A. Number 6 was on the left extensor surface of the
15 hand. This is the extensor surface as I am demonstrating
16 here -- I'm sorry, this is the flexor surface, excuse me.
17 This is the extensor surface, but I previously just said
18 this is anterior and posterior, so they are interchangeable
19 in that sense. And --

20 Q. Go ahead.

21 A. On this surface there was an incised wound.

22 Q. Okay. What about Number 7?

23 A. Number 7, palmar surface, where the palm of your
24 hand -- all of you know what the palm is, it was on this

1 side, and then on the index finger being this finger here,
2 there was another wound; and Number 9, still dealing with
3 the left hand, was on the palmar surface.

4 Q. Moving to the right hand, then.

5 A. We had 10 through 11 and 12 and on the palmar
6 surface of the right hand, as I am demonstrating here,
7 there was a wound, incised wound. Number 11 was an incised
8 wound; and again, Number 12 was also, all on the palmar
9 surface.

10 Q. Moving on then to Area C, the left leg.

11 A. There were three wounds, as I mentioned before, in
12 the left leg. One was on the medial aspect of the left
13 thigh and I'll stand up to demonstrate that and demonstrate
14 on myself, I'm pointing to the right, I'm sorry. This
15 would be the left thigh here. And Number 14 was on the
16 left lateral aspect of the thigh, as I'm demonstrating
17 here. And Number 15 on the left lateral aspect of the
18 thigh, in towards the midline.

19 Q. Doctor, have you heard of the term "defensive
20 wounds"?

21 A. Yes.

22 Q. And could you describe to the jury what those are?

23 A. Defensive wounds usually involve ones person, a
24 person protecting themselves, and they tend to be below the

1 elbows down, they don't have to be on the extremities, but
2 they could even be up here. They could be here, depending
3 on the circumstances. They also could be on the legs, in
4 the medial aspect of the legs, or even lower, or lateral
5 aspect of the legs, too.

6 Q. Why are they called defensive wounds, Dr. Gerber?

7 A. They're called defensive wounds because a natural
8 inclination of a person is to ward off attack like this
9 way, or this way, or clamp legs together, or whatever
10 happens to be the situation to prevent injury from
11 oneself -- on oneself.

12 Q. Doctor, do you have an opinion, based on your
13 examination of the body of Judy Smith, your training,
14 background, experience, whether Judy Smith had what you've
15 called defensive wounds?

16 A. Yes. These were defensive wounds that we have
17 described on the upper extremities and on the lower
18 extremities.

19 Q. Doctor, moving onto the body cavities. Anything
20 that you feel is remarkable in that examination as far as
21 the further internal examination of the body?

22 A. No. As I mentioned all the injuries to the
23 important organs we've discussed and the rest of the
24 examination was really quite unremarkable, other than to

1 say that the brain had deteriorated into a green mushy
2 substance so it had lost its form. But she had no
3 identifiable congenital abnormalities or any kind of a
4 pathological processes that we could tell, or that I could
5 tell at this time.

6 Q. Did you find any evidence of rape at all,
7 Dr. Gerber?

8 A. Semen analysis was done -- I should change that to
9 say that swabs were done of the anus and the oral cavity
10 and the vaginal region and the cervical swabs and no semen
11 was identified.

12 Q. And going on to the microscopic analysis. If you
13 could describe to the jury what a microscopic exam is, why
14 that's done, and what the results are in the blood and body
15 of Judy Smith?

16 A. We often send specimens to a histology laboratory.
17 In this case it was within house and had sections cut so we
18 could examine them under the microscope to look for
19 pathological process. None were found in this case except
20 for autolytic change. The word autolytic change refers to
21 postmortem decomposition. Specimens were sent, of blood,
22 for toxicology analysis and in this case it was sent
23 in-house at the Hamilton County Coroner's office.

24 Q. And as far as Ethyl alcohol, what is Ethyl alcohol

1 and what were the results of that test?

2 A. Ethyl alcohol was .05 grams per hundred m-l, and
3 is consistent of decomposition alcohols. When a person has
4 undergone this amount of decomposition .04 to .06 grams per
5 hundred m-l is a very common finding. So all the alcohol
6 found in her was consistent with decomposition alcohol as
7 formed by the body as a part of decomposition.

8 Q. Not from drinking alcohol like a beer or a mixed
9 drink; is that correct?

10 A. That's correct.

11 Q. And as far as the, whether there were any drugs in
12 her blood, as far as the analysis there, what were the
13 findings on that?

14 A. There were three drugs, one was Butalbital,
15 B-U-T-A-L-B-I-T-A-L; and another one was Carisoprodol,
16 C-A-R-I-S-O-P-R-O-D-O-L; another one was Meprobamate, and
17 that's M-E-P-R-O-B-A-M-A-T-E, they were of very low levels
18 and not in any way toxic or lethal.

19 Q. Are these street drugs, Doctor, or are these
20 prescribed drugs?

21 A. These are prescribed drugs.

22 Q. What type of drugs are they? What do they do?

23 A. They are generally the uhm, an antisedative-type
24 drugs, they are in that family.

1 Q. Sedative drugs?

2 A. Yes.

3 Q. And then you talked about the serology.

4 Doctor, as far as the scene itself, going back to
5 Millcrest Park, did you notice any blood at the scene of
6 the offense, whether it be on the ground, on the leaves or
7 so forth?

8 A. Not very much underneath her at all. The blood
9 was caked or dried on her clothes, as well as on her body,
10 whatever was left.

11 Q. And as far as blood on the scene, on the ground,
12 in the area, did you notice any blood at that area?

13 A. No, I did not.

14 Q. And if somebody, in this case, Judy Smith, would
15 have been killed in the spot where she laid, where you saw
16 her, would you've expected to see blood at the scene at
17 all?

18 MR. ANCONA: Objection.

19 Q. Do you have an opinion, Doctor, based on your
20 training, background and experience, education, whether
21 based on your examination, and your going to the scene and
22 your doing the autopsy, there would have been blood either
23 present or absent at the scene in Millcrest Park where you
24 found her.

1 MR. ANCONA: Objection.

2 MR. TIEGER: You can answer, Doctor.

3 A. There should have been some evidence of blood
4 under her body if she was killed right at that spot, just
5 from the massive blood loss she would of had to suffer. As
6 I mentioned earlier, some of it would have been consumed by
7 insect activity but there would have been something there,
8 more than there was.

9 Q. Okay. And as far as -- let me strike that.

10 The amount of force it would have taken to inflict
11 these type of wounds, how much force, if you know, Doctor,
12 would have been necessary to inflict the type of stab
13 wounds that you've described to the jury?

14 A. I can't give any pounds per square inch. I can
15 just say they would have taken substantial force of an
16 adult to do this to another adult. It does not rule out
17 any kind of sexual differentiation. A strong woman could
18 harm a weak man and vice versa; and a strong man could harm
19 a weaker woman. So it would have to do more with muscle
20 strength and size of somebody to overcome somebody else and
21 be able to do this to one another.

22 Q. I think you used the word "significant force"?

23 A. Yes. It would take very significant force in a
24 child, even a, a young child could not do this.

1 Q. Okay. Did some of the stab wounds go through bone
2 at all or cartilage or did they all just go right to the
3 organs that you've described?

4 A. After looking very carefully we really could not
5 find any bony injuries of any kind in this case. So soft
6 tissue injuries were all that we could identify.

7 Q. And in this type of case, Dr. Gerber, as far as
8 the amount of blood that would have been on the attacker,
9 do you have any opinions as to that question?

10 A. Well, since we indicated, or I indicated that the
11 lung and the heart were major organs of injury, there had
12 to be spurting blood coming from some of these wounds
13 immediately at the time of the act, so that it would be
14 impossible to conceive that somebody would not have some
15 blood on them, if this had been done. That would be very
16 unlikely and to me impossible to see that kind of or to
17 believe that that could be so.

18 Q. Okay. How much blood would you expect -- and let
19 me ask another question first, as far as the order of the
20 stab wounds. Can you tell the order of these stab wounds,
21 Dr. Gerber?

22 A. I can't tell the order. As we went through this,
23 indicating anatomic areas, descriptions of this kind of
24 complexity requires documentation from head to toe, and as

1 I did from top to bottom, and then the extremities came
2 last, more out of simplicity and clarity than any other
3 reason, but I do not know which one came first or last.

4 Q. So you don't know whether the stab wound to the
5 heart could have come after she was already dead from a
6 stab wound to the liver, let's say.

7 MR. ANCONA: Objection, asked and answered.

8 Q. Doctor, do you have an opinion as to whether the
9 heart stab wound came first, the liver, or any of those
10 things you've talked about?

11 A. I don't really know which one came first in these
12 cases -- in this case.

13 Q. When somebody is fatally stabbed, let's say the
14 first stab wound, wherever it might have been, does the
15 blood stop flowing at that point in a person or --

16 A. Well, not immediately. People can live for a
17 little bit even with major injuries to the heart. So it
18 depends on what kind of level of consciousness this woman
19 had at the time this happened.

20 Q. Okay. And as far as going back to how much blood
21 would have been on her attacker. Would it be the amount of
22 blood that somebody could wipe off quickly, and if so, do
23 you have an opinion as to that?

24 MR. ANCONA: Objection.

1 MR. TIEGER: You can answer that.

2 A. In my experience I have seen some very minimal
3 injuries and with very minimal evidence of blood on the
4 person, that's possible. I have also seen the opposite,
5 where a vital organ, such as the heart was injured and then
6 there was a fair amount of blood. Certainly there had to
7 be some and it's clear that she had a lot on herself. To
8 have none would be unthinkable and to me unrealistic.

9 Q. And as far as -- let's say there would be blood on
10 the attacker's hands. Would that be fair to say, Doctor?

11 A. Assuming that person didn't have gloves on.

12 Q. Okay. And could that person wipe their hands off?

13 MR. ANCONA: Objection.

14 A. Superficially you can clear blood off but it does
15 leave some stains.

16 Q. I understand that, Doctor.

17 So if I understand you correctly, in your opinion
18 the attacker would not be covered in blood, so-to-speak; is
19 that fair to say?

20 MR. ANCONA: Objection leading.

21 MR. TIEGER: You can answer that.

22 A. Well, assuming they weren't wrestling with this
23 person, had just, you know, intimate body contact, under
24 those circumstances there would be blood all over the

1 person. But with several stab wounds there wouldn't have
2 to be much blood at all.

3 Q. Okay.

4 A. It would be depending on the circumstances of the
5 altercation.

6 Q. Doctor, how long would the onset of death have
7 been after the stab wounds?

8 A. It varies a lot with my experience. One vessel,
9 such as the femoral artery or femoral vein, for example, a
10 person could be dead within an hour with no medical
11 attention. Another instance, that I have just done
12 recently where the femoral artery and vein were lacerated
13 with a gunshot wound, they were dead within 45 minutes with
14 no medical care. So it does vary to some extent.

15 Q. On your postmortem examination, on the death
16 record, you indicated that it would take minutes from the
17 interval between the onset of the injuries to death. Is
18 that a fair estimate, Doctor?

19 A. As I said, it's hard to tell, but certainly
20 within, within an hour this lady is most assuredly dead.

21 Q. Would she have been unconscious then or unable to
22 move then after these injuries would have been inflicted on
23 her?

24 A. Well, with shock, which she would have undergone

1 with loss of blood, she would have lost consciousness and
2 then her heart could have still been beating, so she could
3 have bled some after that.

4 Q. Okay. Doctor, based on your training, experience,
5 education, do you have an opinion as to the cause of death
6 of Judy Smith?

7 A. This is multiple stab wounds of the chest,
8 abdomen, back and extremities, and the manner of death is a
9 homicide.

10 Q. I'm going to show you some exhibits, if I could.

11 If you could look at that and let the ladies and
12 gentlemen of the jury know what that is, it's State's
13 Exhibit Number 1.

14 A. This is a black and white photograph with leaves
15 partially covering the head of the decedent, which we have
16 been discussing.

17 Q. Is that the scene as it existed when you got there
18 at lower Millcrest Park?

19 A. That's right, it is.

20 Q. Exhibit Number 2?

21 A. This is a black and white photograph with the face
22 partially uncovered and the teeth, as I had described them
23 earlier in the upper part of the jaw, as well as all the
24 maggots infesting this particular decedent.

1 Q. And again is that taken at the scene?

2 A. Yes, it was.

3 Q. Are those fair and accurate representations of the
4 way the scene looked when you were there?

5 A. Yes, they are.

6 Q. Exhibit 3?

7 A. This is a picture of the head and the left side of
8 the neck area, an area that I described revealing the
9 partial skeletonization and chest and abdomen in the morgue
10 at the Hamilton County Examiner's office with the extensive
11 maggots present on the decedent.

12 Q. Exhibit 4?

13 A. These are two pictures in color, one is with the
14 body partially uncovered, face up, arms up like this and
15 legs spread open, partially covered by leaves and more
16 significantly by maggots. The upper picture is a color
17 picture of the bikini pink top that I had described.

18 Q. Exhibit 5 and 6?

19 A. These are four color pictures of the clothing.
20 One was the white jump suit, exercise suit covered by
21 blood. The other one is the pink bikini top and there are
22 blowups or enlarged portions of the jump suit with the
23 tears in it to illustrate the wounds as I described them
24 that were found underneath these portions of clothing.

1 Q. Exhibit 7?

2 A. One is -- one of the pictures here is of the legs
3 and the private parts and the stomach on the anterior
4 aspect in the -- at the park. Another one is a close-up
5 view of some of the wounds with the maggots around the
6 wounds.

7 Q. Exhibit Number 8?

8 A. The one is a picture of the upper torso on the
9 anterior aspect with the face and the arms upward, as I
10 indicated earlier with the leaves surrounding them and the
11 maggot infestation. The other one is at the morgue where
12 the body had been partially cleaned up and the multiple
13 stab wounds of the abdomen are indicated.

14 Q. Exhibit 9, 10 and 11, could you describe what
15 those represent?

16 A. Exhibit 10 and 11 and part of Number 9 illustrate
17 the injuries on the hands that I had described, and the
18 painted fingernails. Number 9 reveals the incised wound
19 that I described on the leg.

20 Q. Doctor, on one of the, I believe it's number --
21 some of these hand pictures, it looks like the, for
22 instance 11, on the very bottom picture, it looks like Judy
23 Smith is almost wearing a glove or something on her hand.
24 Is that just the skin peeling off?

1 A. It's another form of decomposition we call skin
2 slippage. The skin is like a glove, it starts slipping
3 off, that's what's illustrated in this particular picture.
4 It looks like she has a glove on. All it really is is the
5 superficial part of the skin called the epidermis which is
6 coming off.

7 MR. TIEGER: Doctor, thank you for your
8 testimony. I don't have any questions.

9 Mr. Ancona, I think, has some questions.

10 Maybe we could take a short break to try to
11 figure out his itinerary as far as the plane and
12 so forth.

13 MR. ANCONA: Fine.

14 (A short break was taken.)

15 CROSS-EXAMINATION

16 BY MR. ANCONA:

17 Q. Dr. Gerber, my name is Perry Ancona, I'm
18 representing Mr. Neeley and I have to ask you a few
19 questions, also.

20 Calling your attention again to June 1, 1994. You
21 had the occasion to go to the Millcrest Park; is that
22 correct?

23 A. That's correct.

24 Q. And had you ever been there before, sir?

1 A. No.

2 Q. Okay. Did you go by yourself or did you go with
3 Bob Learman?

4 A. I went with Bob Learman.

5 Q. Okay. And when you arrived there, did you come in
6 contact with Peter Alderucci? Do you know Peter Alderucci?

7 A. I'm sorry, but the time length is quite
8 considerable I do not remember. I do know there were
9 police officers there.

10 Q. So if I gave you the name of Lieutenant Crowe, or
11 Detective Patrick, or Detective Huston, that would not ring
12 any bells presently?

13 A. I'm sorry, it does not.

14 Q. Okay. You had conversation with law enforcement
15 when you arrived?

16 A. I did.

17 Q. And when you arrived there, was the body -- I'm
18 going to show you what the State's deemed Exhibit Number 1,
19 and that indicated the time was 12:30 on 6/1/94, that that
20 was taken, on the back of that. So you didn't arrive at
21 12:30, did you?

22 A. I know that I pronounced her at 1:35, it was very
23 shortly thereafter when, before that that we arrived, yes.

24 Q. Would you look at that photo again, sir? Are you

1 saying that that's how it appeared when you were there, or
2 that's the general area, or was the body more -- were the
3 leaves more removed from the body when you first observed
4 it?

5 A. They might have been a little more removed, I
6 really can't recall.

7 Q. It's hard to say. Okay. But that's the general
8 area of the scene that you looked at, at the time?

9 A. Yes. She was primarily covered up, but they had
10 really not -- they had not touched the body and they had
11 not turned it. We did turn it and we did handle it at the
12 scene.

13 Q. Okay. You were present when it was turned? Did
14 you assist in that, sir?

15 A. I did, yes. I took many of the -- in fact all the
16 photographs from the time we arrived, almost all of them.
17 I believe Mr. Learman took some, too.

18 Q. Okay. Did you sketch the body, sir, at that time,
19 when you were there?

20 A. Not at that time, I don't recall. I did that at
21 the coroner's office.

22 Q. Okay. And so you wouldn't be sketching the wounds
23 on the body at the scene?

24 A. No. That was all done in the morgue at the

1 autopsy.

2 Q. And would you describe the insects that you
3 observed when you first observed the body? What types of
4 insects?

5 A. The ones I recall were the maggots.

6 Q. Okay. Did you see any flies, sir?

7 A. Well, flies were around because they were also
8 laying eggs simultaneously.

9 Q. Did you see any other type of insects?

10 A. I did not, no.

11 Q. Would you say the body was fairly alive with
12 insects and maggots at that time?

13 A. It was, yes.

14 Q. Did you observe the person when the leaves were
15 removed or when you first got to look at the body without
16 the obstruction of leaves, were you able to observe any
17 jewelry, watch, or necklace on the individual?

18 A. I don't recall that right now. What we do is
19 normally bring the body in, don't remove anything, and then
20 any jewelry is put in -- taken off, identified, put in
21 security at that time.

22 Q. Okay.

23 A. The only thing I do as a pathologist is look at
24 the clothing.

1 Q. Okay. Did you note that there was any kind of
2 jewelry, as far as your examination's concerned, or would
3 you not note that?

4 A. We don't normally note that.

5 Q. Okay.

6 A. Either here or other places I have worked.

7 Q. Did you, sir, at the time that you observed the
8 body at Millcrest Park on the 28th of May, 1994, did you
9 obtain and preserve samples of the larvae, maggots, flies
10 or other insects?

11 A. I think we did but I don't have record of that in
12 front of me and I don't remember.

13 Q. Okay. Would that be done by the criminalist?

14 A. Normally we would take that and send it off to the
15 University of Cincinnati to the entomology department or to
16 the toxicology department for toxicology.

17 Q. You would agree that those types of maggots,
18 larvae, flies and insects would be important in determining
19 the length of time that the body had been there?

20 A. They could be very helpful, yes.

21 Q. Very helpful. Did you determine the body
22 temperature at the scene, sir?

23 A. Other than it was warm, I don't recall. All I
24 have is the autopsy record in front of me. The other

1 information that Mr. Learman may have recorded I don't have
2 in front of me, so that may have been reported.

3 Q. When you first observed the body what did you see?
4 You saw a body there, and did you see blood on the body, on
5 the surface of the body, and the clothing of the body?

6 A. I saw leaves, I saw maggots and then I saw bloody,
7 dried blood on the clothing.

8 Q. Doctor, are you familiar with the term postmortem
9 lividity?

10 A. Yes.

11 Q. Would you agree that is often referred to as livor
12 mortis?

13 A. Yes.

14 Q. Would it be fair to say that livor mortis is a
15 purplish-blue discoloration due to the settling of blood by
16 gravitational forces within dilated, toneless capillaries
17 of the deceased skin? Would that be a fair definition?

18 A. On a white person livor mortis is either
19 reddish-pink or purple, depending on the length of time.

20 Q. Okay. The rest of the definition I provided to
21 you, due to the settling of blood by gravitational forces
22 within the dilated, toneless capillaries of the deceased
23 skin; is that an accurate statement?

24 A. That's part of it, yes.

1 Q. Okay. Would you agree that livor mortis begins
2 within 20 minutes to roughly perhaps a couple hours within
3 the time of death?

4 A. Livor mortis begins really right away at the time
5 of death.

6 Q. Process begins right away?

7 A. Yes.

8 Q. As far as observational by the naked eye, of
9 seeing livor mortis, can you see it instantly or do you
10 have to be present for a period of time if you're actually
11 observing it?

12 A. You have to be present for a period of time to
13 observe it.

14 Q. So the manifestations, the outward manifestations
15 of livor mortis would not be visual for at least 20
16 minutes; is that fair to say?

17 A. That would be close, yes.

18 Q. Close in that area?

19 A. Yes.

20 Q. Okay. Would you agree that the process of livor
21 mortis is a gradual process? Progressively comes more
22 advanced as time passes?

23 A. Yes.

24 Q. Sir, would you further agree that if there is

1 livor mortis that approximately eight -- I don't know if
2 I'm accurate on this, 8 to 12 hours after death, that the
3 blood congeals in the capillaries and it's difficult to
4 have blanching or displacement of that coloration?

5 A. It becomes fixed over a period of time, yes.

6 Q. And fixed, is that the same term as permanent or
7 something that remains, doesn't change?

8 A. It's best illustrated by a body that has purple
9 or -- usually purple livor mortis and when you press it
10 with the thumb, for example, there is no more blanching.

11 Q. Okay. The decedent female that you observed in
12 Millcrest Park on the 28th of May, 1994, was laying on her
13 back; is that correct?

14 A. Yes.

15 Q. Okay. You saw some people from law enforcement
16 there when you arrived?

17 A. Yes.

18 Q. Were they in the area of the body also when you
19 were making your observations, or at least some of them,
20 sir?

21 A. They were nearby, yes.

22 Q. Would you say that the face and upper torso were
23 very discolored, almost black with lividity?

24 A. Really the face had become parchment-like, a dark

1 brown color, which is an advanced state of decomposition.

2 And parts of the body were black, yes.

3 Q. Okay.

4 A. The face was dark brown.

5 Q. Okay. What I'm asking about the face and the
6 upper torso, would you refer to that as lividity?

7 A. Generally speaking you use the word lividity as a
8 more immediate, prior to what state of decomposition we are
9 talking.

10 Q. Okay.

11 A. It's all a part of a spectrum of decomposition.

12 Q. Was there livor mortis present though at the time
13 that you observed the body? At least on the torso, face
14 area?

15 A. There was marbling, there were different kinds of
16 stages of decomposition.

17 Q. Okay. Specifically I'm asking about livor mortis
18 and the term and the definition that I provided to you and
19 you agreed upon.

20 A. Yes. In my statement on Page 2 I say livor mortis
21 is absent, but there was some evidence of marbleization,
22 which would be consistent to some degree of fixation of the
23 blood settling.

24 Q. Okay.

1 A. It's just that the major decomposition had gone
2 much beyond what is classically called livor mortis, but it
3 is part of livor mortis, yes.

4 Q. But livor mortis was present, but you're saying it
5 was an advanced stage, that's why we have marbleization?

6 A. Yes.

7 Q. Now, was that in the face and upper torso?

8 A. No. Everything was gone in terms of that by that
9 time.

10 Q. Okay. Now, did you come to a medical conclusion
11 based to a reasonable medical certainty that this body had
12 been laying on its stomach or side and an upper portion of
13 the torso was at an angle that was lower than the feet and
14 the lower extremities?

15 A. You mean originally, or what?

16 Q. Yes, sir.

17 A. In other words, if you have livor mortis, if you
18 have the settling of blood that's a gravitational
19 situation, is it not?

20 A. Yes.

21 Q. Did you come to a medical conclusion that the
22 body, during the process of livor mortis was on her face at
23 an angle wherein the upper torso and face were in a lower
24 position than the feet and the lower torso?

1 A. With the way the body looks, looked at that time,
2 it makes sense that that would have happened, yes, because
3 of the -- the decomposition was most advanced at the top of
4 the head and it decreased, to some extent, towards the
5 legs, which showed the marbleization which we talked about.

6 Q. Okay. So you felt the body had been moved or
7 turned?

8 A. It had been moved, I thought, because of the --
9 that was one issue and the other issue was the lack of any
10 blood around the ground around it, where she was found.

11 Q. Doctor, based on your observations at the park
12 that day, and your description of an advanced livor mortis
13 in the upper torso and face area, how long would the body
14 have to be laying post death on its face or front torso, in
15 order to have livor mortis be present?

16 A. Are you talking about face down and buttocks up?

17 Q. Yes, sir.

18 A. In relationship to each other?

19 Q. How long would it have to be laying in that
20 position in order for the observations that you made
21 relative to marbleization, which was an advanced form of
22 the livor mortis, how long would that have to happen for a
23 person to be laying in that position in order for that to
24 set in?

1 A. I don't know the answer to that.

2 Q. Would you say several hours, to be fair?

3 A. I would say a good number of hours, yes.

4 Q. A good number of hours. So if the body were moved
5 you are saying it were moved several hours after death?

6 A. Well, it would be easier to say, to answer the
7 question if, for example, there was rigor left but there
8 wasn't.

9 Q. There was no rigor mortis present when you
10 observed?

11 A. No. Absolutely none.

12 Q. At the scene or at the time you did the autopsy

13 --

14 A. Right.

15 Q. -- is that correct?

16 A. That's correct.

17 Q. Since that's absent and we have livor mortis and
18 advanced stages of it being the marbleization, I'm trying
19 to get an idea for the ladies and gentlemen of the jury how
20 long that body would have to be laying at that angle post
21 death to come to that condition?

22 A. As I said, I don't really know the answer to that.

23 Q. Would you agree it's at least several hours,
24 though?

1 A. Yes, I indicated it would be, yes.

2 Q. Okay. Did you notice that the lower torso did not
3 have any indicators of lividity?

4 A. I believe I described the legs as there was
5 marbleization, I'm not sure what all -- I'll look at the
6 report here to answer that. The skin from the shoulders to
7 the superior of the umbilicus was dark red-brown leathery,
8 so that was very much a leathery kind of a skin with very
9 dried nature. There was some sparing of the extremities
10 and then there was marbleization of both feet. So the only
11 significant marbleization was really in the feet, as my
12 description describes.

13 Q. Dr. Gerber, you said there were anal, oral,
14 vaginal and cervical swabs; is that correct?

15 A. I did.

16 Q. And there was no semen identified?

17 A. That's right.

18 Q. Now, that does not mean, obviously, the person did
19 not -- was not raped; is that fair to say?

20 A. What it says is, it's a negative finding and it
21 just says no semen was there.

22 Q. Okay. It does not rule out rape is what I'm
23 saying.

24 A. It does not rule out rape.

1 Q. When you have these larvae, maggots, blowflies,
2 flies and other insects, they tend to eat the liquid first
3 and then into the fleshy portions, different types of
4 insects eat the fleshy portions of the body; is that
5 correct?

6 A. Yes. In fact, any openings, as we have in this
7 case of a lot of openings on the upper torso because of the
8 wounds, one of the reasons we have an appearance here is
9 because of the massive numbers on the chest torso, the
10 maggots getting there, eating up the soft, the liquids,
11 whatever they may be, including blood, and that part
12 becomes much more dried out than the lower part; and
13 therefore because of that it's not really, it's very hard
14 to determine the answer to the question you just posed
15 about how long a body was in a certain position.

16 Q. Certainly. But it's possible, sir, medically
17 speaking, that if there were semen that the insects could
18 have eaten that liquid; is that correct?

19 A. It's very likely that the study gave us this
20 information but whether what it really has to say in terms
21 of significance is hard to determine.

22 Q. I understand. All you can really say is there's
23 no semen present?

24 A. We can say it's absent.

1 Q. Absent. And you mentioned before a little bit, if
2 you had, if you did use U.C.'s forensic entomologist, that
3 type of discipline would be able to use maggots, flies,
4 other insects scientifically to try to determine the time
5 and a date of a death on a body; is that correct?

6 A. Well, when there's more advanced decomposition,
7 when pupa form and when -- even more advanced than this,
8 when we are past the maggot stage to the pupa, that is, the
9 maggots live only so long, six to ten days and then they
10 become pupa, little encased brown capsules, in this
11 particular instance we had evidence that we did not need to
12 go any further in terms of using the insects for further
13 time identification purposes.

14 Q. Would you agree, though, that the forensic
15 entomologist, if you would have collected specimens the
16 forensic entomologist could look at those and make a more
17 scientific determination for times?

18 MR. TIEGER: Objection.

19 MR. ANCONA: You may answer, sir.

20 A. Well, an entomologist does just that and I'm sure
21 that they could answer maybe within a little bit more
22 precise than what I have, but not much more. In this
23 particular case it wasn't deemed necessary.

24 Q. As far as the maggots are concerned they appear a

1 day to three days, do they not? Within 24 hours?

2 A. I indicated 24 hours after.

3 Q. That's the minimal?

4 A. Flies lay eggs on, as I mentioned earlier, on the
5 almost dead person as well as very soon after death.

6 Q. A more unconscious persons?

7 A. Yes, unconscious persons in a well-cared for
8 medical intensive care unit fly eggs are laid, yes.

9 Q. Did you comb the pubic hair of the decedent to
10 determine whether there were any foreign hairs?

11 A. We did all that, yes.

12 Q. Is there a record of that, sir?

13 A. I do not have that in my autopsy report.

14 Q. Should it be there, sir?

15 A. It would be in the entire folder at the Hamilton
16 County Coroner's office if not in the Prosecuting
17 Attorney's office here.

18 Q. But it was done and the, either the coroner's
19 office has it or the prosecution or law enforcement has it?

20 A. We combed the pubic hair and then we plucked it,
21 also.

22 Q. Okay. Is the purpose to see if there was a
23 foreign hair?

24 A. That's right, yes.

1 Q. Okay. As far as the instrument used to penetrate
2 the body, you said there was 25 wounds, stabs, on the torso
3 and maybe another 15 on the extremities. You're not in a
4 position to say what that instrument was; is that fair to
5 say?

6 A. I indicated earlier it would need to be a sharp
7 instrument of some kind.

8 Q. Okay. It would have to be sharp, would you agree
9 that you can only tell that with detailed meticulous
10 dissection along the track of the hemorrhage to get a
11 better idea of the wound?

12 A. Well, we are also dealing with a very compromised
13 decedent here. The gaping wounds were so decomposed that
14 it was very hard to tell about sharp ends and blunt ends.
15 I said there were no sharp ends, but unless you have a
16 really fresh tissue you can't make that kind of
17 determination.

18 Q. So you can't say if there's blunt ends or sharp
19 ends?

20 A. It was very hard to determine.

21 Q. It's very hard to say what kind of instrument was
22 used except it was a penetrating instrument?

23 A. We know it was a penetrating instrument. We know
24 she had both incised and stab wounds. That's what we know.

1 Q. Now, as far as blood on the surface of the body
2 that was found, observed, it would have been possible to
3 quadrant that off or dissect it off or make some lines and
4 to test that blood to see if any of that blood was the
5 assailant's blood, is that possible, sir?

6 A. Yes. Techniques are available for that.

7 Q. Do you know if that was done?

8 A. I don't recall that it was.

9 Q. Okay. Was there blood at or near the perimeter of
10 the body, sir?

11 A. No, just on the body itself, primarily on the
12 clothes, by this stage, it had really been consumed by the
13 postmortem insect activity.

14 Q. The various medications that you indicated that
15 were found in her system, Meprobamate, that is a medication
16 that affects the central nervous system, is it not?

17 A. Yes.

18 Q. And that's also a drug that is a drug of abuse and
19 one of the warnings is you may become drug dependent on
20 this type of thing. Are you familiar with that, sir or
21 not?

22 A. Well, it's true with about almost every drug
23 that's prescribed.

24 Q. Yes. The Butal -- what was that? Bu --

1 A. Butalbital.

2 Q. Butalbital. That's also a prescription drug, is
3 that correct?

4 A. It's part of the barbiturate family.

5 Q. And is that a drug of abuse, also, sir?

6 A. It can be.

7 Q. Are you aware that one of the side effects of this
8 drug caused drowsiness and dizziness, confusion?

9 A. Yes.

10 Q. And the other is an offshoot of Soma -- I forget
11 what you said the third one was -- Cari --

12 A. Carisoprodol.

13 Q. Okay. Are you familiar with Soma?

14 A. Yes.

15 Q. Okay. And that's also an addictive drug a drug of
16 dependency, it also affects the central nervous system; is
17 that fair to say?

18 A. All three of them have a potential for that.

19 Q. Now, not knowing the time and date of death and we
20 do know the levels in the blood of these medications,
21 prescription medications, would they change as far as from
22 the time of death to the time that they were tested in the
23 laboratory?

24 A. Yes, but this state of decomposition these would

1 be -- there's redistribution, I explained the alcohol
2 before.

3 Q. Yes, sir, you did.

4 A. So this, it's known that there are redistribution
5 of drugs, and it's very likely they could have been a
6 little higher at the time of death, we just don't know
7 that.

8 Q. Well, I think you can say that to a medical
9 certainty, can you not, that if a person were dead more
10 than a couple days, and you have a level of these drugs
11 that we find in the body, that surely prior to death they
12 were at a higher level?

13 A. Yes, right.

14 Q. Thank you. And I think you straightened up
15 something before when Mr. Tieger asked you the question
16 that the onset of death would be less than an hour in your
17 medical opinion, based to reasonable medical certainty?

18 A. With these extensive injuries, yes.

19 Q. Yes, sir. You couldn't say necessarily that they
20 were minutes, even though it says in the report, within
21 minutes, it's more accurate to say less than an hour than
22 it is to say within minutes?

23 A. I believe that would be a fair statement.

24 Q. Thank you. Did you take any x-rays to determine

1 whether any portion of any instrument that might have been
2 used broke off by striking a bone?

3 Were any x-rays taken?

4 A. I know that we had to work on the identification
5 at the -- on the onset, and as I recall, there may have
6 been dental x-rays, but in this case, unless something,
7 somebody is totally -- let me pause a minute. I believe
8 x-rays were taken but, as I say, I don't have that record
9 and I don't know for sure.

10 Q. Okay.

11 A. Because the stab wounds routinely here and where I
12 work now, we do take x-rays for that very reason.

13 Q. Would the autopsy, postmortem report here refer to
14 x-rays if they were taken?

15 A. No. That would be in the master folder in the
16 Coroner's Office here in Hamilton County.

17 Q. And the prosecutor has access to that?

18 A. He does.

19 Q. Now based to a reasonable medical certainty it's
20 almost impossible to say time and date of death in a body
21 like this, is it fair to say?

22 A. Yes, it's very hard to be very precise. You can
23 give estimates.

24 Q. Okay. We do know that you were in the park on

1 June 1, and we do know that approximately 1:30 in the
2 afternoon, and is it consistent to say that the person died
3 two days or three days earlier than that? Is that
4 consistent, medically speaking, with what you found on the
5 body with the 24 hour maggots present?

6 A. That's two days plus -- I think two to four days,
7 somewhere, something like that would be reasonable.

8 Q. Okay. So you really can't specify anything more
9 scientific with what you had to go on besides two to four
10 days?

11 A. It would have to come from other observations,
12 other than the autopsy itself.

13 Q. Okay. But you're not in a position to say to a
14 reasonable medical certainty that the date and time of
15 death would be somewhere on May 28, between the morning,
16 late morning hours and early afternoon hours on the 28th.
17 That would be impossible for you with what you have to work
18 with to say that, wouldn't it?

19 A. I couldn't specify. I can only say it would be
20 consistent with that.

21 Q. And you say two days later it would still be
22 consistent with that?

23 A. Well, that's why this, this is a -- these are
24 estimates, as I mentioned before, and with the postmortem

1 changes I indicated before, the range is days, it's not
2 hours or minutes.

3 Q. I understand. So it's a range of two to four
4 days, sir, for the date and time of death?

5 A. Also, as I indicated earlier in this deposition
6 that it depends what the heat was, how much heat there was,
7 exposure-wise. Somebody in a basement dead, in a cool
8 basement, deceased, would be slower to decompose than out
9 in a park, for example, where there's heat in the early
10 months of spring or springtime.

11 Q. And to your knowledge this was out in the park,
12 early month of springtime with some heat?

13 A. Where we found her, yes.

14 Q. Yes, sir. So all I'm saying to you is that with
15 what you have to work with to make a scientific and medical
16 opinion, you can only give us a range of date and time of
17 death of two to four days prior to your observations on the
18 28th -- on the first of June, rather, '94?

19 A. Yes, because of the variety of circumstances in
20 terms of temperature and so on that affect decomposition.

21 Q. Sir, did -- when you were present there did the
22 police tell you when they thought the time of death was?

23 A. Not at all.

24 Q. Not at all.

1 A. It was totally unknown at the time about the
2 circumstances.

3 Q. So nothing was said?

4 A. We did not know who this was at the time.

5 Q. Okay. And sir, based on your observations at the
6 scene, your medical training, your experience and your
7 autopsy, you certainly have no way of knowing who the
8 assailant was that killed this woman?

9 A. Not from the information I had just at this scene,
10 no, I don't know.

11 Q. Okay. At the scene plus the autopsy. That's all
12 the information you had, is it not?

13 A. As the forensic pathologist, at the scene and the
14 autopsy is the information I had, yes.

15 Q. Would it have been helpful to obtain blood samples
16 from individuals to see if any blood matched blood found on
17 the body of the decedent? Would that have been a helpful
18 situation --

19 MR. TIEGER: Objection.

20 Q. -- in an investigation?

21 MR. TIEGER: Objection.

22 MR. ANCONA: You may answer.

23 A. It can be helpful or it cannot be helpful
24 depending on the scene. As I earlier indicated, if there

1 was a wrestling match between the two, the provocateur, or
2 assaultant and the decedent, and blood was mixed, all you
3 could say that they were both there.

4 Q. You said this injury could have been -- these
5 injuries, I'm sorry, could have occurred, you're not saying
6 gender-wise, you don't eliminate a woman from causing these
7 injuries?

8 A. Well, what I was trying to point out in that
9 instance was it had to be somebody strong. Now a strong
10 woman, strong man or vice versa. A sexual differentiation
11 can't be made, but it would have to be an adult with
12 strength.

13 Q. Were you informed by the police that a condom was
14 found not far from the site of the body?

15 A. I can't recollect that anymore. I don't remember.

16 MR. ANCONA: Okay. I have no other
17 questions. Thank you.

18 THE DEPONENT: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. TIEGER:

21 Q. Doctor, just one or two things on the --
22 Mr. Ancona asked you about the x-rays and whether there
23 would be a broken knife or anything in there. You did the
24 autopsy, did you find any broken blades or foreign objects

1 in the body at all?

2 A. No. As I indicated, we usually, without
3 exception, we x-ray people who have been stabbed or
4 potentially stabbed to look exactly for that, for foreign
5 body and fragments of blade, and we did not find any.

6 MR. TIEGER: Okay. That's all, Doctor.

7 Thank you.

8 MR. ANCONA: Follow-up to that one question.

9 RECROSS-EXAMINATION

10 BY MR. ANCONA:

11 Q. The reason you use x-rays, is x-rays are more
12 scientifically reliable than the medical examiner, you in
13 this case, going through and looking for a small piece of a
14 broken off instrument?

15 A. Right. That's right.

16 MR. ANCONA: Okay. Thank you.

17 THE DEPONENT: Thank you.

18

19

20

JOHN E. GERBER, MD
(Signature waived.)

21

22

- - -
DEPOSITION CONCLUDED AT 3:00 P.M.

23

24


C E R T I F I C A T E

STATE OF OHIO :
: SS
COUNTY OF HAMILTON :

I, Barbara Ann Thacker, RPR, the undersigned, a
duly qualified and commissioned notary public within and
for the State of Ohio, do hereby certify that before the
giving of his aforesaid deposition, JOHN E. GERBER, MD was
by me first duly sworn to depose the truth, the whole truth
and nothing but the truth; that the foregoing is the
deposition given at said time and place by JOHN E. GERBER,
MD; that said deposition was taken in all respects pursuant
to stipulations of counsel hereinbefore set forth; that I
am neither a relative of nor employee of any of their
counsel, and have no interest whatever in the result of the
action.

IN WITNESS WHEREOF, I hereunto set my hand and
official seal of office at Cincinnati, Ohio, this 26th day
of November, 1999.

My commission expires:
May 15, 2003


BARBARA A. THACKER, RPR
Notary Public - State of Ohio